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Supreme Court, U.S.
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No. 89-1934

In The

Supreme Court Of The United States

OCTOBER TERM, 1989

KENNETH DAMON
Petitioner,

v.

STATE OF CONNECTICUT
Respondent.

BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE CONNECTICUT SUPREME COURT

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QUESTIONS PRESENTED

I. Whether the Connecticut Supreme Court denied the petitioner his Sixth Amendment right of confrontation when it affirmed the trial court's admission of an autopsy report as a business record.

II. Whether the judgment of the Connecticut Supreme Court, holding that the petitioner was not "seized" within the meaning of the Fourth Amendment prior to his confession, conflicts with the decisions of this court.

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CONSTITUTIONAL PROVISIONS AND SUPREME COURT RULES INVOLVED

Fourth Amendment to the United States Constitution

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or Affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Sixth Amendment to the United States Constitution

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be

informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Fourteenth Amendment to the United States Constitution

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Rule 10

CONSIDERATIONS GOVERNING REVIEW ON WRIT OF CERTIORARI

1. A review on writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered:

(a) When a United States court of appeals has rendered a decision in conflict with the decision of another United States court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed

from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

(b) When a state court of last resort has decided a federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals.

(c) When a state court or a United States court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decisions of this Court.

OPINION BELOW

The opinion of the Connecticut Supreme Court is reported at 214 Conn. 146, 570 A.2d 700 (1990), and is reproduced in the petitioner's appendix at A-1. The petitioner's motion for reargument or reconsideration was denied by the Supreme Court on April 12, 1990. A copy of the order denying the motion is reproduced in the petitioner's appendix at B-1.

I. STATEMENT OF THE CASE

The petitioner was convicted of murder, in violation of Connecticut General Statutes §53a-54a(a), in connection with the stabbing death of Monica Joyner on September 9, 1987. On February 24, 1989 the petitioner was sentenced to a prison term of 60 years.

The petitioner appealed his conviction to the Connecticut Supreme Court. The Supreme Court heard oral argument on December 13, 1989 and issued its unanimous opinion affirming the conviction on March 6, 1990.

The Connecticut Supreme Court upheld the trial court's denial of the petitioner's motion to suppress inculpatory statements made at the police station on the night of the murder. That Court agreed with the trial court's

conclusion that the petitioner's contact with the police was voluntary and did not amount to a Fourth Amendment "seizure" prior to the time of the inculpatory statements. State v. Damon, 214 Conn. at 152-55; Petitioner's Appendix at A-8 - A-12.

The Connecticut Supreme Court also held that the trial court's admission into evidence of the victim's autopsy report, as a business record, through the testimony of a pathologist who was not present at the autopsy, did not violate the petitioner's Sixth Amendment right of confrontation. Id., 155-60; Petitioner's Appendix at A-13 - A-18.

II. REASONS FOR DENIAL OF THE PETITION

A. Consistent With Federal Precedent, The Admission Of An Autopsy Report Under The Business Record Exception To The Hearsay Rule Does Not Violate The Confrontation Clause

The petitioner first argues that certiorari is warranted to determine whether the Sixth Amendment Confrontation Clause prohibits the admission into evidence of an autopsy report under the business records exception to the hearsay rule.

The petitioner's alleged basis for certiorari is insubstantial on its face. The question posed has already been answered in a manner adverse to the petitioner. The decisions of this Court firmly establish the constitutional permissibility of admitting reliable, trustworthy hearsay evidence. The

Connecticut Supreme Court has simply reaffirmed this longstanding principle of constitutional adjudication.

As the court below recognized, the confrontation clause and hearsay rule, while protecting similar values, are not coextensive. State v. Damon, 214 Conn. at 158; Petitioner's Appendix at A-15-A-16. Hearsay evidence may be admitted without violating the confrontation clause. Ohio v. Roberts, 448 U.S. 56, 100 S.Ct. 2531 (1980). "Firmly rooted exceptions to the hearsay rule do not violate the confrontation clause." United States v. Baker, 855 F.2d 1353, 1360 (8th Cir. 1988), cert. denied, ___ U.S. ___, 109 S.Ct. 2072 (1989). The precepts of confrontation are satisfied when an out-of-court statement meets the conditions of a well established

exception to the hearsay rule. Bourjaily v. United States, 483 U.S. 171, 107 S.Ct. 2775 (1987).

It is undisputed that the autopsy report of the victim in this case was admissible under a firmly rooted exception to the hearsay rule, the business records exception. See State v. Damon, 214 Conn. at 155-57; Petitioner's Appendix at A-13 - A-15. Under these circumstances, a court is not required to independently inquire into the reliability of the document. Bourjaily v. United States, 107 S.Ct. at 2782-83. Even where such an inquiry is made, as it was here, it only serves to further undermine the petitioner's alleged basis for certiorari. The exception for business records is considered to be among the "safest" of hearsay exceptions

in terms of reliability. See Ohio v. Roberts, 100 S.Ct. at 2539 n.8. Specifically, an autopsy report derives from well-recognized, routine procedures, is written by a neutral party having no motive to falsify, and contains factual recitations of objective physical observations. See State v. Damon, 214 Conn. at 159-60; Petitioner's Appendix A-16 - A-18. Considering the inherent reliability of an autopsy report, the utility of confrontation of the pathologist who actually performed the autopsy would have been remote and minimal. See Reardon v. Manson, 806 F.2d 39 (2d Cir. 1986), cert. denied, 481 U.S. 1020, 107 S.Ct. 1903 (1987).

The decision of the Connecticut Supreme Court is thus in full accord with the applicable law as set forth by

this Court in Ohio v. Roberts, supra, and Bourjaily v. United States, supra. Rather than presenting any conflict in constitutional law, the decision below follows a long line of cases rejecting confrontation claims raised in the same context; see, e.g., Montgomery v. Fogg, 479 F.Supp. 363, 369-71 (S.D.N.Y. 1979); Collins v. State, 267 Ind. 233, 235-36, 369 N.E.2d 422 (1977); or analogous contexts; see, e.g., Reardon v. Manson, supra; United States v. Smith, 869 F.2d 348, 355 (7th Cir. 1989); United States v. DeWater, 846 F.2d 528, 529-30 (9th Cir. 1988). The petitioner has failed to provide any substantial basis for certiorari.

B. The Holding That The Petitioner Was Not "Seized" Prior To His Inculpatory Statements Does Not Conflict With The Decisions Of This Court

The petitioner argues that certiorari is warranted because the Connecticut Supreme Court "evaded this Court's rulings" in Brown v. Illinois, 422 U.S. 590, 95 S.Ct. 2254 (1975) and Wong Sun v. United States, 371 U.S. 471, 83 S.Ct. 407 (1963), and "violated the rule" of Taylor v. Alabama, 457 U.S. 687, 102 S.Ct. 2664 (1982) and Dunaway v. New York, 442 U.S. 200, 99 S.Ct. 2248 (1979), by holding that the petitioner was neither arrested nor seized prior to his confession. According to the petitioner, certiorari is necessary to protect the judicial system from the use of confessions obtained through the exploitation of Fourth Amendment

violations.

The petitioner's alleged basis for certiorari completely misses the mark. The Connecticut Supreme Court properly applied the Fourth Amendment principles established by this Court. No conflict exists between the Connecticut court and other state or federal courts applying the same principles.[1]

"[N]ot all encounters between law enforcement agents and citizens amount to seizures of the person." United States v. Brown, 884 F.2d 1309, 1311

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[1] In addition, the holding that there was no Fourth Amendment "seizure" constitutes a fact-bound determination. This Court does "not grant a certiorari to review evidence and discuss specific facts." United States v. Johnston, 286 U.S. 220, 45 S.Ct. 496, 497 (1925). The petitioner's disagreement with the holding of the Connecticut Supreme Court does not present any basis for certiorari and the resources of this Court should not be squandered on review of such a fact-bound determination.

(9th Cir. 1989), cert. denied, ___ U.S. ___, 110 S.Ct. 732 (1990), quoting, United States v. Safirstein, 827 F.2d 1380, 1383 (9th Cir. 1987). "[A] person has been 'seized' within the meaning of the Fourth Amendment only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." United States v. Mendenhall, 446 U.S. 544, 554, 100 S.Ct. 1870 (1980); see Michigan v. Chesternut, ___ U.S. ___, 108 S.Ct. 1975, 1979 (1988).

Voluntary interactions between the police and citizens do not implicate Fourth Amendment protections. United States v. Webster, 750 F.2d 307, 320 (5th Cir. 1984), cert. denied, 471 U.S. 1106, 105 S.Ct. 2340 (1985). A person is not arrested or seized under the Fourth

Amendment if he freely chooses to enter into or continue an encounter with the police. United States v. Brunson, 549 F.2d 348, 357 (5th Cir.), cert. denied, 434 U.S. 842, 98 S.Ct. 140 (1977); Bridges v. United States, 392 A.2d 1053, 1056 (D.C. 1978), cert. denied, 440 U.S. 938, 99 S.Ct. 1286 (1979). Police officers do not violate an individual's constitutional rights by approaching him, by asking him if he is willing to answer some questions, by putting questions to him if he is willing to listen, or by offering into evidence in a criminal prosecution his voluntary answers to such questions. Florida v. Royer, 460 U.S. 491, 103 S.Ct. 1319, 1324 (1983); Rodgers v. Lincoln Towing Service, Inc., 771 F.2d 194, 200 (7th Cir. 1985).

Notwithstanding the petitioner's continued effort to distort the facts in his favor, the circumstances of this case, as found by the trial court and outlined by the Connecticut Supreme Court, contain all the earmarks of a consensual encounter, rather than a Fourth Amendment seizure: two plain-clothes detectives drove to the petitioner's place of employment and asked him if he would voluntarily accompany them to the police station to be interviewed in connection with a homicide investigation; the petitioner, a mature adult who was not a suspect, was informed that he was not under arrest, that he did not have to accompany the detectives and that he was free to leave; the petitioner readily agreed to accompany the detectives; before

leaving the petitioner returned to his work area unescorted in order to retrieve his backpack, which was not searched; the petitioner travelled to the police station in a regular, unmarked car; the petitioner was not physically or verbally restrained or handcuffed; the petitioner never requested to go home; the petitioner was interviewed by one or two detectives in an open conference room; some 45 minutes into the interview the petitioner implicated himself in the murder. See State v. Damon, 214 Conn. at 148-49, 154-55; Petitioner's Appendix at A-3-A-5, A-11 - A-12.

Nothing in the four cases cited by the petitioner compels a result different from that reached by the Connecticut Supreme Court. The majority in

Dunaway v. New York, supra, concluded that the defendant "was 'seized' in the Fourth Amendment sense when he was taken involuntarily to the police station." (Emphasis added); Dunaway v. New York, 99 S.Ct. at 2253. Dunaway does not change the rule that a voluntary trip to the police station for questioning does not implicate the Fourth Amendment. See United States v. Webster, 750 F.2d at 320-322; United States v. Huberts, 637 F.2d 630, 635-37 (9th Cir. 1980), cert. denied, 451 U.S. 975, 101 S.Ct. 2058 (1981). The cases of Taylor v. Alabama, supra, Brown v. Illinois, supra, and Wong Sun v. United States, supra, all involved confessions deriving from indisputably illegal arrests. As the Connecticut Supreme Court correctly held, here there was neither an arrest

nor a seizure prior to the petitioner's confession.

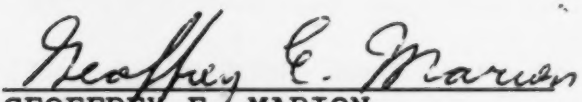
The determination of the Connecticut Supreme Court that the voluntary interaction between the police and petitioner did not infringe on Fourth Amendment values exemplifies a proper adherence to well-settled law. See e.g., United States v. Ortega-Santana, 869 F.2d 12 (1st Cir. 1989); United States v. Huberts, supra; United States v. Brunson, supra; State v. Collins, 543 A.2d 641 (RI 1988); State v. Hunt, 555 A.2d 369 (VT 1988); Commonwealth v. Corriveau, 396 Mass. 319, 486 N.E.2d 29 (1985). The petitioner has wholly failed to demonstrate a ground for certiorari in this area of Fourth Amendment jurisprudence.

CONCLUSION

The petitioner presents no issue of importance worthy of review. Therefore, the respondent respectfully urges this Court to deny the petition.

Respectfully submitted,

THE STATE OF CONNECTICUT,
Respondent

By: 

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